

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

02:07-CR-00080-CRW-PAL
[2-12-CV-02092]

v.

ORDER

GARY COLOMBO,

Defendant.

The court held an in-person hour-long hearing in Las Vegas on May 15 for the purpose of determining whether to grant Gary Colombo's request for an evidentiary hearing and appointment of a lawyer at government expense to represent him. Colombo is indigent; his expected date for release from federal prison is January 2015. An evidentiary hearing is warranted on his pleaded claim, supported by two affidavits, that his CJA appointed trial attorney, Oswaldo Fumo, was constitutionally ineffective. See 28 U.S.C. §2255; 18 U.S.C. § 3006A.

The court directs the United States Clerk of Court (DNV) to find and appoint for petitioner/defendant Gary Colombo an attorney to represent him at the evidentiary hearing required in this case. ¹ To establish ineffective assistance of counsel, a movant must show counsel's performance was professionally unreasonable and that, but for the deficient performance, the outcome of the proceeding would have been different. Strickland v.

¹ This court's April 19, 2013 Order (Docket #360) determined an evidentiary hearing was needed despite the objection of the government that no hearing was required because "Colombo's factual allegations are palpably incredible and contradicted by the record." See Government Opposition filed April 2, 2013 (Docket # 359).


Washington, 466 U.S. 668, 694 (1984)(ineffective assistance of counsel standard). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

In selecting the lawyer for petitioner from the CJA panel, the Clerk of Court shall consider both who is the next lawyer who would ordinarily be assigned to the case and who is the panel lawyer, if any, requested by petitioner. Also the lawyer contacted by the Clerk of Court to represent Gary Colombo should be told the court wishes to hold the final hearing in late June or in July 2013, and that the court will probably not allow fees and expenses in excess of the ordinary maximum amounts for post-conviction cases filed pursuant to 28 U.S.C. section 2255.

The dates in June and July when the undersigned judge will be available for an evidentiary hearing in Las Vegas are June 17-24 and the entire month of July 2013. Counsel appointed for Gary Colombo and government counsel shall promptly meet in person or by phone, then shall file their proposed date or dates when counsel and their witnesses are all available for the hearing.

IT IS SO ORDERED.

Dated this 22nd day of May, 2013.


CHARLES R. WOLLE, JUDGE
U.S. DISTRICT COURT